

### **REMARKS/ARGUMENTS**

Claims 1-43 stand rejected in the outstanding Official Action. Claims 1-43 remain in this application.

The Examiner's acknowledgement of acceptance of the formal drawings filed January 19, 2006 is very much appreciated. Similarly, the Examiner's acknowledgment of Applicants' claim for priority and receipt of the certified copy of the priority document is very much appreciated. Finally, the consideration of the prior art noted in the previously filed Information Disclosure Statement is appreciated.

Claims 1-10, 14-16, 18-22 and 33-43 stand rejected under 35 USC §102(e) as being anticipated by Jenkins et al (WO 03/065091) ("Jenkins I"). As noted in 35 USC §102(e), the requirement of a prior art reference relied upon by this section is an application for patent published "**by another** filed in the United States before the invention by the applicant for patent." It is noted that the inventive entity Richard Jenkins and Mark McNie, the co-inventors of Jenkins I, is the exact same inventive entity in the present application. Accordingly, Jenkins I is not the invention of "another" and therefore is not available as prior art under 35 USC §102(e) against the present application. Accordingly, any further rejection of claims 1-10, 14-16, 18-22 and 33-43 thereunder is respectfully traversed.

Claims 23, 24, 27, 28 and 30 stand rejected under 35 USC §102(b) as anticipated by Krippner ("Microspectrometer System for the Near Infrared Wavelength Range based on the LIGA Technology"). A review of the Krippner reference shows that the hollow waveguides disclosed therein provide radiation guidance in one dimension only (see the second headed "1.

Optical layer” on page 143, lines 8-10 which specifically indicates that the “radiation may spread in a ‘quasi-free optical’ manner.”).

As will be noted, the subject matter of claim 23 is illustrated in various examples in the present application and utilizes hollow core optical waveguides which provide guidance in two transverse dimensions. This is also discussed in Applicants’ published PCT specification in the paragraph bridging pages 10 and 11. Although the characteristic of guidance in two transverse dimensions is not literally specified in claim, those of ordinary skill in the art will appreciate that this is an inherent consequence of the hollow core waveguides identified.

However, applicants have also amended claim 23 to recite this attribute of hollow core optical waveguides, thereby limiting claim 23 to only such waveguides which provide guidance of radiation in two transverse directions. This clearly confirms that the claimed invention of claim 23 and claims dependent thereon cannot be anticipated by Krippner which teaches away from the claim 23 invention by specifying that the radiation is free to “spread” in a quasi-free optical manner. Thus, Krippner not only fails to anticipate the subject matter of claim 23, it specifically teaches away from the hollow core waveguide which has as its characteristic radiation guidance in two transverse directions.

Moreover, the Krippner reference would not and could not be used to provide guidance in two dimensions, as he relies on diffraction in the horizontal plane to perform his demultiplexing function. As a consequence, Krippner clearly fails to anticipate or render obvious the subject matter of claim 23 or claims 24, 27, 28 and 30 dependent thereon. Therefore, any further rejection of claims 23, 24, 27, 28 and 30 as being anticipated by the Krippner reference is respectfully traversed.

Claim 11 stands rejected under 35 USC §103 as unpatentable over Jenkins et al (WO 03/065091) (“Jenkins I”) in view of Jenkins (“A Hollow Waveguide . . .”)(Jenkins II). Jenkins I is not available as prior art, since it is not a patent application of “another” and therefore Jenkins I is not available as a reference. Because Jenkins I is not available, the combination rejection of claim 11 under 35 USC §103 over only Jenkins II is unsupported and therefore respectfully traversed.

Claim 12 stands rejected under 35 USC §103 as unpatentable over Jenkins II in view of Jenkins I. As noted above, Jenkins I is not available as a reference and therefore the combination rejection of claim 12 under 35 USC §103 is unsupported.

Claim 13 stands rejected under 35 USC §103 as unpatentable over Jenkins I. As noted above, Jenkins I is not available as prior art against any claims in this application and therefore the rejection of claim 13 is unsupported.

Claim 17 stands rejected under 35 USC §103 as unpatentable over Jenkins I in view of Murphy (WO 99/42879). Inasmuch as Jenkins I, as noted above, is not available as a reference, the combination rejection of claim 17 under 35 USC §103 is unsupported and any further rejection thereunder is respectfully traversed.

**Telephone Interview with Examiner Smith August 8, 2007**

In reviewing the subject matter of paragraphs 60 and 61 of page 14 of the Official Action, it is noted that the Examiner appears to be rejecting claims 25 and 26 under 35 USC §103, although this is not apparent from the text. Applicant’s undersigned representative contacted Examiner Smith on August 8, 2007, who upon review, confirmed that it was his intention that the rejections of claims 25 and 26 as set out in sections 60 and 61 on page 14 of the Official

Action be under the provisions of 35 USC §103. The Examiner's clarification is very much appreciated.

Claims 25 and 26, as noted above, are being rejected by the Examiner under 35 USC §103 and this rejection is respectfully traversed. As noted above, Krippner does not anticipate or render obvious the subject matter of claim 23. Claims 25 and 26 ultimately depend from claim 23 and therefore cannot be anticipated or rendered obvious by the Krippner reference. The above comments distinguishing Krippner from claim 23 are herein incorporated by reference. Therefore, any further rejection of claims 25 and 26 under the provisions of 35 USC §103 is respectfully traversed.

Claim 29 stands rejected under 35 USC §103 as unpatentable over Krippner in view of Jenkins II. The above comments distinguishing claim 23 from the Krippner reference are herein incorporated by reference. It is noted that claim 29 depends directly from claim 23 and therefore Krippner fails to anticipate or render obvious the subject matter of claim 29. Moreover, as noted above, Krippner teaches away from guidance in two transverse directions and therefore Krippner would lead one of ordinary skill in the art away from any combination with Jenkins which would render obvious the subject matter of claim 29.

Claims 31 and 32 stand rejected under 35 USC §103 as unpatentable over Krippner in view of Jenkins I. The above comments distinguishing claim 23 from the Krippner reference are herein incorporated by reference. Claims 31 and 32 depend from claim 23 and therefore claims 31 and 32 cannot be obvious in view of the Krippner reference.

While the Examiner references the corresponding U.S. Publication No. 2005/0089262, this is the same document as Jenkins I, in that both stem from PCT/GB03/00331 and therefore

are the same inventive entity as in the present application which is not available as a reference under §102(e) or §103(c). It is also noted that the Jenkins et al U.S. Publication No. 2005/0089262 includes a spelling error with respect to the spelling of Mark McNie's name.

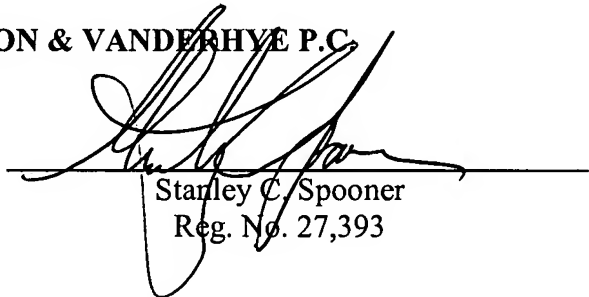
In view of the above, none of the rejections are available under 35 USC §102(e) or §103(c) and any further rejection thereunder is respectfully traversed. The Examiner's rejections based upon the Krippner reference have been distinguished from the claimed invention. Accordingly, there is simply no basis for any rejection of Applicants' pending claims 1-43 and any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-43 are in condition for allowance and notice to that effect is respectfully requested. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

**NIXON & VANDERHUYE P.C.**

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